Mediation Handbook

Alberta
MUNICIPAL AFFAIRS

MUNICIPAL SERVICES BRANCH

The Intermunicipal Dispute Resolution Initiative has been established to address disputes between municipalities or municipalities and another public agency. When parties are flexible and are interested in establishing or maintaining an ongoing relationship, we recommend the mediation process. Involving a third party to help develop solutions both parties can agree on, can save municipalities money and avoid lengthy and unnecessary legal proceedings.

Municipal Services has put this booklet together as a guide to help you work through the mediation process. The contents describe the advantages of mediation, information on the mediation process including how to choose a mediator, and a sample contract.

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Introduction to Mediation – A Glossary of Terms

Mediation
In mediation, a mediator facilitates a discussion between two or more parties who need to resolve an issue. The mediator helps the parties communicate and negotiate more efficiently, and as a result, resolve their issue or come to a mutually agreeable solution. The mediation process seeks to develop solutions that satisfy the interests of all parties.

Issue
This is the subject matter of the dispute.

Position
This is one party's solution to the issue being discussed based on their own interests.

Interest
These are the needs, wants, fears and concerns, which motivate people to take a certain position. They are also the items that will have to be addressed if the issue is to be satisfactorily resolved.

Consensus
Consensus is the general agreement among parties to support the solution reached by the group through mediation.

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Dispute Resolution Options

There are a number of options parties can choose from when confronted with a dispute or a difference of opinion:

- **Informal discussion/problem solving** - Parties work together informally to either reach a solution or agree to drop the matter.
- **Direct negotiation** - Formal unassisted negotiations directly between the affected parties.
- **Mediation** - A neutral third party helps parties develop a solution they can both agree on.
- **Mini hearing** - A knowledgable third party hears a summary of each party's best case and renders a non-binding opinion of the likely outcome if the matter went to court or to a formal hearing.
- **Arbitration** - A private process in which a third party renders a decision after hearing evidence from all involved. The decision is normally binding.
- **Tribunal/Courts** - A public process where a judge or a hearing panel have the responsibility of arriving at a solution. Often a lawyer represents each party, addresses the judge or the panel and brings in evidence.

MEDIATION	TRIBUNAL / COURTS
Low cost	High cost
Timely	Time consuming
Scheduled quickly	Dependent on court times
Direct communication between parties	Lawyers speaks to decision maker
Encourages dialogue	Discourages dialogue
Builds relationships	Discourages relationships
Parties develop solutions	Solution imposed

A Case Study

A town and its neighbouring county had a long-standing dispute over an annexation proposal. The bottom line? The town wanted more land and the county felt threatened. Both sides had a strong adversarial history that included lawsuits. Mediation would allow for a solution that didn't involve the courts and would satisfy both municipalities.

After a call to Municipal Affairs, the Minister met with and encouraged both groups to try mediation, and offered financial assistance as an incentive. Over five months, the parties, facilitated by the mediation team, spent 105 hours developing an annexation agreement that would resolve their concerns. To begin, each municipality formed a team of five people (three councillors and two staff) who had the responsibility of bringing forward names of potential mediators. A team of two mediators was chosen.

At the first mediation meeting, ground rules were set including when the group could meet and the protocols for the meeting. Mediation meetings were held weekly and each side was to be represented by a chief elected officer (mayor or reeve), one councillor and a staff member, but alternates were also appointed. Early in the mediation process, both sides identified what the critical issues were and why. Each issue was brought to the table and given time for discussion. Everyone was given the opportunity to speak but only one person spoke at a time. In time, they began on drafting a preliminary agreement.

A key to the mediation process was the focus on current and future issues. One mediator encouraged the participants to imagine packing the past in a suitcase and leaving it at the door. The approach allowed the participants to stay on-task and the final agreement not only provided for a staged annexation, but also a joint drainage study, a schedule for road transfer and maintenance, and an agreement to leave the farm land undeveloped for as long as possible.

As you can see by reading this case study, one of the major benefits of mediation is that it allowed discussion to take place on a wide range of issues. Also, the skills that were developed during the mediation process were transferred to the participants, allowing them to use the same process to resolve conflicts in other situations.

The mediation process takes a mutual gains approach to bargaining. It seeks to develop solutions that satisfy the interests of all parties. It asks the parties to clarify the position they have taken on an issue and determine the underlying interests that are at the core of an issue. Rather than taking a hardball approach (the more I get, the less you get) or a soft approach (seeking a compromise to placate the other side), mutual gains negotiations strive to ensure the interests of all are met. The parties identify as many different items/elements related to a potential solution as they can, creating a maximum number of opportunities to develop a solution that satisfies all the parties. Determining what those items/elements are requires that the parties have a good understanding of what each other's interests or needs are.

THE MEDIATION PROCESS

The Assessment

Preparation

Convening the Parties – The First Meeting

What are the Issues?

Understanding Interests & Gathering Data

Creating & Evaluating Options

Crafting a Solution

Ratification

Step 1: The Assessment – Is Mediation an Option?

Mediation is an effective option to resolving disputes or differences when all or some of the following conditions exist:

- When the dispute has been characterized by poor communication and distrust.
- When the sharing of information will lead to the possibility of a better understanding of the issues involved.
- When the other parties are needed in order to implement a solution.
- When the establishment of a trusting working relationship will help future interactions with the other parties.
- When there is a likelihood that neither party would get what they want if the dispute went before a tribunal/courts.
- When there are a broad range of related issues that an administrative tribunal or the courts might not have the ability to address.
- When there is there room for collaboration and creativity.

Step 2: Preparation

Once the decision has been made to use mediation, it is important that time be spent ensuring that the necessary conditions are in place. The mediator seeks to confirm that:

1. All the stakeholders are supportive of the process and willing and able to participate.
2. There is support for the process from the municipal councils involved.
3. All participants are willing to be involved in establishing and agreeing to the ground rules.
4. The necessary financial and time resources are available to get the job done.
5. The participants have the basic communication skills needed to be effective negotiators.

(See Appendix A for a sample document that will help you establish some basic ground rules around the mediation process.)

Selecting a mediator

The mediator is selected and agreed to by all parties in the dispute. Alberta Municipal Affairs encourages parties considering the use of mediation to use a team of two mediators. The complexity of the issues being addressed, the number of participants at the table, and the time involved in the negotiations support the value of a team approach.

Referrals can be obtained from Alberta Municipal Affairs' roster of qualified private sector mediators, the Alberta Arbitration and Mediation Society, or the Canadian Dispute Resolution Directory. In addition, Alberta Municipal Affairs provides a mentoring service in which the department covers the costs of an associate mediator to work as part of the mediation team.

Choosing the right mediator for you

After interviewing the mediators, take some time to reflect on their responses. How did they communicate with you? Were they good listeners? Did they ask good questions? What knowledge did they have about the dispute, its context, politics, etc.? (For a complete list of questions designed to assist you in choosing a mediator refer to Appendix B.)

Remember the mediators will be working with you and the others during some tense times. It is important that you trust the mediators to run a fair and impartial process. Once you are satisfied with the credentials of the mediator, check his or her references. When all parties are satisfied that they have chosen the right mediator, they ask the mediator to draw up an "Agreement To Mediate" (see Appendix C for a sample contract). This document will outline the mediation process, procedural guidelines, and service fees and will need to be signed by all parties.

Selecting your team

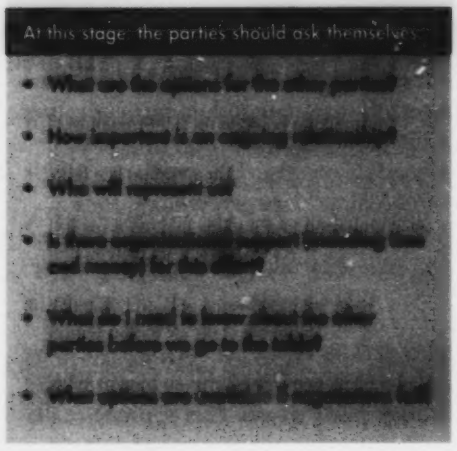
Different decision making processes require different skills on the part of the participant. Before a judge or a tribunal, your primary concern is to convince the decision maker of the merits of your case and to question the other party's case. This approach calls for an individual who is skilled in presenting the facts that support your position.

Mediation takes a mutual gains approach and requires effective two-way communication. Joint crafting of a resolution requires that all parties have a clear understanding of each other's issues and interests. Parties will normally set up a negotiating team consisting of a lead representative and an alternate. Support personnel may or may not be part of the team.

Participants should:

- be effective listeners;
- separate personalities from the problem to be solved;
- seek resolution to the larger picture over domination by your own group's or other group's view of the issues;
- commit the necessary time to the process;
- be committed to an outcome that is mutually acceptable to all the parties;
- look for ways to get beyond the positions each group takes;
- be imaginative in crafting solutions; and
- be a good communicator.

The mediator will spend time with each of the individual parties to ensure that they are prepared for the negotiations. These discussions include focusing on interests rather than positions, and providing the participants with a better understanding of effective negotiation techniques.

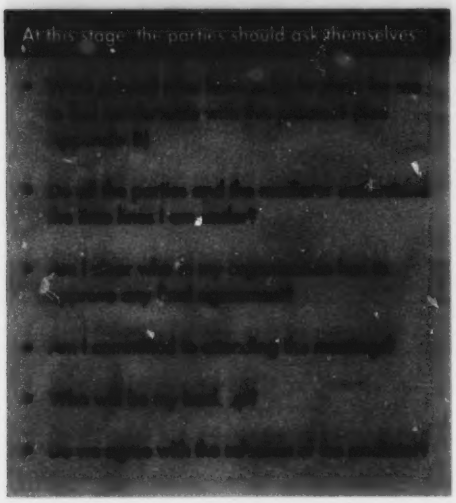


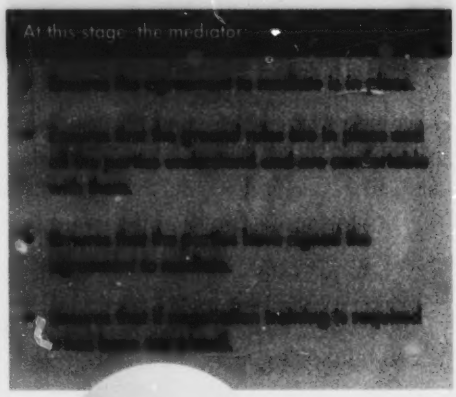
Step 3: Convening the Parties – The First Meeting

During their first joint meeting with the mediator, the parties finalize the mediation agreement (Appendix A). This is signed by all the participants and outlines:

- the timeframe;
- the agreement to mediate;
- who the mediator(s) are;
- the rules of behaviour;
- the willingness of all parties to negotiate;
- the subject matter of the mediation; and
- and a variety of other topics related to the process.

A separate contract may be signed with the mediator(s) detailing rates, roles, etc. (a sample contract is provided in Appendix C.)





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At this stage, the parties should ask themselves:	At this stage, the mediator asks:
• What are the options for the other parties?	• Are the right parties involved?
• How important is an ongoing relationship?	• Is there an understanding by the parties of the issues under discussion?
• Who will represent us?	• Do the parties have a good understanding of negotiation strategies?
• Is there organizational support (including time and money) for this effort?	• Where is the most appropriate place to hold the negotiations?
• What do I need to know about the other parties before we go to the table?	• Is there a commitment from the parties to an initial meeting?
• What options are available if negotiations fail?	

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A separate contract may be signed with the mediator(s) detailing rates, roles, etc. (a sample contract is provided in Appendix C.)

At this stage, the parties should ask themselves:

- **What ground rules have to be in place for me to feel comfortable with this process? (See Appendix B)**
- **Do all the parties and the mediator understand the time lines I am under?**
- **Am I clear who in my organization has to approve any final agreement?**
- **Am I committed to attending the meetings?**
- **Who will be my back up?**
- **Do we agree with the selection of the mediator?**

At this stage, the mediator:

- **Ensures the agreement to mediate is in place.**
- **Ensures that the ground rules are in place and all the parties understand and are comfortable with them.**
- **Ensures that the parties have signed the agreement to mediate.**
- **Ensures that if negotiation training is required it has been completed.**

Step 4: What are the Issues?

Once the agreement to mediate document is finalized, the participants identify **all** the issues that need to be addressed to reach a final solution. These issues make up the agenda.

At this stage, the parties:	At this stage, the mediator:
• Identify the issues that from their perspective will have to be addressed in order to resolve the dispute. • Ensure that all of their issues are on the table.	• Ensures that each party has had an opportunity to get their issues out on the table. • Collates the issues into one document, which becomes the group's working agenda.

Step 5: Understanding Interests and Gathering Data

Parties must identify the interests that support the position that they have taken on an issue. Having a clear understanding of the reasons that drive you to a position is critical to developing the final solution. In some cases this involves jointly selecting a consultant to do studies and provide required information, and in others it could be a simple agreement to use data that one of the parties already has. Whatever data is used, all parties must agree to its credibility and acceptability.

At this stage, the parties:	At this stage, the mediator:
• Reflect on what is really important to them in this dispute. • Articulate to the other parties what is important to them. • Listen carefully and when necessary seek to clarify and get a better understanding of the interests of the other parties. • Identify what data they need. • Agree on how the data will be obtained and who will be carrying out the required studies.	• Assists the parties in identifying their interests. • Allows each party uninterrupted time to articulate what their interests (as opposed to their positions) are. • Works to ensure that the parties have a clear understanding of the others interests. • Summarizes the interests and identifies the common interests of the parties. • Ensures that there is agreement on the type of data and how it will be obtained.

Step 6: Creating and Evaluating Options

The tendency in any group is to immediately evaluate options as they are put on the table. While there is some merit to doing an immediate check to see if there is an obvious solution available, it is important to avoid doing anything that might reduce the creation of additional options. If a quick solution is not available, the group should take the time needed to brainstorm and develop as many options as possible.

Once the list of options has been generated, evaluate each option and do some reality testing. Ask yourself, how do these options meet our interests? Can this option be sold to my council and to our ratepayers? When a preferred option is selected the mediator will often ask the parties to re-examine some of the rejected options to determine if any elements can be added to the preferred option so as to enhance it.

At this stage, the parties should ask themselves:

- What options exist?
- What independent criteria can we use to evaluate the options?
- Can this deal be sold to our constituents or ratepayers?
- What can we do to help the other parties sell it to their ratepayers?

At this stage, the mediator:

- Works with the parties to ensure that all the technical information is available.
- Guides the parties though an option generation process.
- Works with the parties to develop evaluation criteria.
- Ensures that each option is evaluated and that each party reality tests the solutions to determine whether or not it can be implemented.
- Works with the parties to reassess the preferred option to see if it can be improved by adding elements from some of the rejected options.

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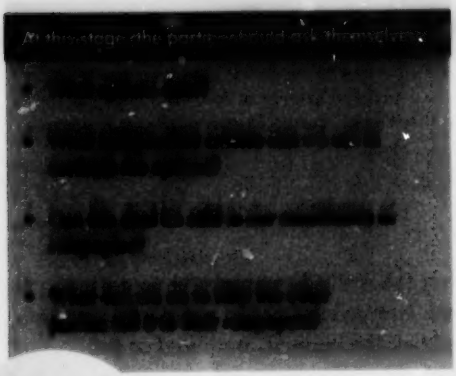

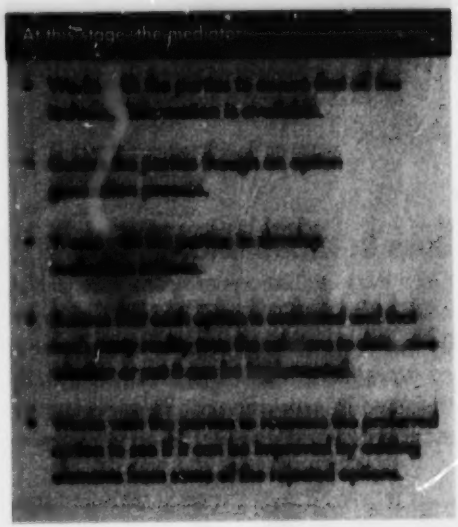

Step 7: Crafting a Solution

Once the group has evaluated all the options, and ensured their interests are addressed, a final package is put together. This package reflects the differing interests of all the participants and includes:

1. the substantive components of the solution;
2. an implementation plan; and
3. an alternate dispute resolution process for use, if disagreements arise during implementation and subsequent operations.

At this stage, the parties should ask themselves:

- **What requirements do I have regarding implementation?**
- **Does the implementation plan meet my interests?**

At this stage, the mediator:

- **Works with the parties to develop an implementation strategy including who will do what when.**
- **Works with the parties to develop a conflict resolution strategy to deal with unforeseen problems that could emerge during implementation.**

Step 8: Ratification

Once the negotiations are complete, each party takes the agreement back to their council for ratification. The ratification process can involve either a joint presentation by both negotiating teams to a joint meeting of all the councils involved or individual presentations made to individual councils. In both of these cases the mediator can be involved by working with the negotiating teams to prepare their presentation materials and develop a presentation strategy.

At this stage, the parties should ask themselves:

- **Do the other parties clearly understand the requirements I have for ratification and what the time lines are?**
- **Would a presentation by the entire negotiating team to a joint meeting of the councils involved be a good idea?**

At this stage, the mediator:

- **Ensures that all the parties have clearly articulated their ratification process.**
- **Provides assistance to each of the parties as needed and agreed to by all.**

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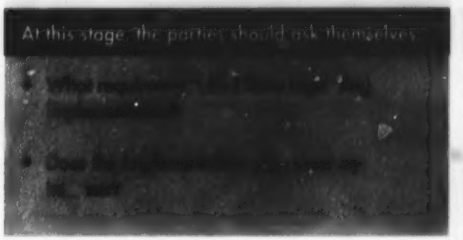

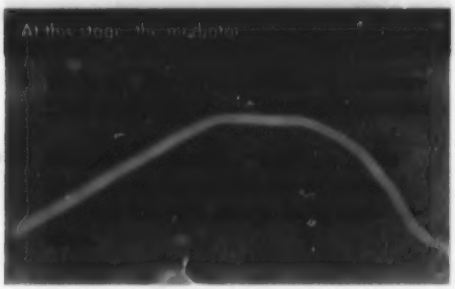

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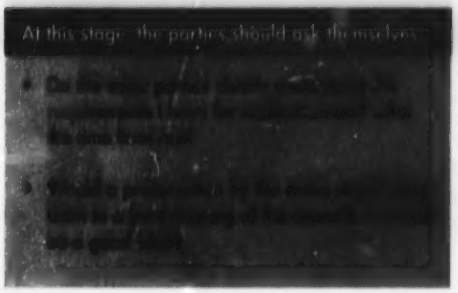
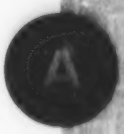


Appendix A: Framework for Mediation



It is the group's responsibility to develop a document that sets out ground rules, protocols, and a framework for a process that will work for them. In order to prepare for that discussion, you will need to identify what concerns the ground rules will need to address in order for you to be comfortable in the process?

They could be:

- I'm afraid the group will get bogged down with....
- These processes are always unfair because of....
- I need to be assured that I will be heard and respected.
- What would happen if they did...

The agreement generally includes the following items:

- Purpose of the group (why we exist, the task at hand)
- Structure (the use of observers or alternates)
- Timelines
- Decision making process
- Confidentiality
- Media contact
- Expenses
- Meeting procedures
- Definitions of consensus
- Who the mediator is

What suggestions do you have for each item? What other items should be added?

Appendix B: Selecting the Mediator

The following questions are designed to assist you in choosing a mediator who best fits your needs:

Experience

- What experience do you have? (Does the mediator's past track record indicate that he or she has the experience necessary to conduct this mediation?)
- If you don't have substantive knowledge in these issues, how would you handle this deficit?
- Can you give us some examples of cases/situations similar to this one that you have worked in?

Personal Attributes

- Have you signed/endorsed a code of ethics?
- Can you describe your style as a mediator?
- Is the mediator a good listener and communicator?
- Does the mediator demonstrate integrity and honesty?
- Is the mediator free of any previous involvement in the dispute; can they function independently?

Training

- What training do you have? (Forty hours of basic mediation training is considered the minimum level acceptable.)
- Have you been involved in ongoing professional development?

Process

- Who is responsible for meeting logistics, preparing agendas, keeping meeting notes?
- What expectations do you have of each of the parties?
- Can you explain the process that you intend on using? Also note: Can the mediators work together as a team?

Fees

- What do you charge for your services? How much will this process cost?
- Is there a way in which we can keep costs down? How much time will it take?
- Do you have separate rates for travel time?
- Is the same rate charged for preparation as for the actual mediation?

Note: The Alberta Arbitration and Mediation Society advises that the fee schedule ranges from $100 per hour for a mediator with limited experience to $200 per hour for an experienced, senior mediator.

Appendix C: Sample Contract

This agreement is made between _____ Mediator

and _____ Parties

Purpose: This agreement governs the terms and conditions of the mediation.

What The Mediator Will Do:

1. The Mediator agrees to help the Parties discuss the matters in dispute between them, assist the parties in communicating and negotiating as effectively as possible, and assist the parties in reaching a settlement of the dispute.
2. The mediator also agrees to keep confidential: discussions in the mediation proceedings; and all documents generated for the purpose of reaching a settlement of the dispute.
3. The Mediator's agreement to keep matters confidential does not apply if the Mediator is required by law to disclose the discussions or documents, or if the parties both agree in writing that the Mediator can disclose all or part of the discussions or documents.

What The Mediator Will Not Do:

Mediation is a process of facilitated negotiations and accordingly.
The Mediator will not:

1. make decisions for the parties;
2. provide legal advice to the parties; and
3. provide technical advice to the parties.

Fees and Expenses:

1. The Mediator's fees will be charged at the rate of $_____ per hour for telephone discussions, preparation, meetings, mediation sessions and follow-up work.
2. The parties will pay all expenses incurred by the Mediator. Expenses could include fax messages, messenger costs, long distance telephone calls, travel accommodation, meals and word processing
3. The parties agree to each pay ____ of the Mediator's fees and expenses, plus G.S.T

Dated in _____ on _____, 2001.

Signed _____ Signed _____ Signed _____